AFR
Judgment reserved on 27.09.2022
Judgment delivered on 30.09.2022

Court No. - 66

Case :- MATTERS UNDER ARTICLE 227 No. - 6178 of 2022

Petitioner :- Naval Kishor Sharma
Respondent :- State of U.P. and Another
Counsel for Petitioner :- In Person, Mohammed Iftekhar
Counsel for Respondent :- G.A.

Hon'ble Samit Gopal, J.

1. Heard Sri Mohammed Iftekhar Farooqui, Advocate learned counsel for the petitioner, Sri Manish Goyal, learned Senior Advocate/Additional Advocate General, Sri S.K. Pal, learned Government Advocate, Sri A.K. Sand, learned Additional Government Advocate, all assisted by Sri Rupak Chaubey, Sri B.B. Upadhyay, Sri S.B. Maurya and Sri Raj Kumar Gupta, learned counsels for the State of U.P. and perused the records.

2. The present petition under Article 227 of the Constitution of India has been filed by Naval Kishor Sharma, S/o Deonath Sharma with the following prayers:-

> "It is therefore most respectfully prayed that this Hon'ble Court may be pleased to set aside the judgement and order dated 26.4.2022 passed by Sessions Judge, Mau in Criminal Revision No. 54 of 2022, Nawal Kishor Sharma Versus State of U.P. as well as judgement and order dated 11.03.2022 passed by Civil Judge (S.D.)/Addl. Chief Judicial

Magistrate/M.P. M.L.A. Court, Mau in Misc. Case No.128 of 2019, Nawal Kishore Sharma Vs. Ajay Singh Vishtha @ Yogi Adityanath. Otherwise petitioner would suffer with irreparable loss.

It is further prayed that the court below may be directed to register complaint case against respondent no.2 and hear the matter accordingly.

Or may pass any such further order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case."

3. The brief facts of the case are that a complaint dated 11.1.2019 was filed by the petitioner against Ajay Singh Bist alias Yogi Adityanath for offences under Section 295 (A), 298, 419, 420, 501 IPC, Police Station Dohrighat, District Mau titled as Naval Kishor Sharma Versus Ajay Singh Bist alias Yogi Adityanath mentioning therein the date of occurrence as 28.11.2018, the names and addresses of the witnesses as Naval Kishor (complainant), Yugal Kishore Sharma, S/o Devnath Sharma, Santosh Prajapati, S/o Sidhari Prajapati and other witnesses and record keeper Superintendent Police, Mau alleging therein that the respondent-accused is a Mahant of Gorakshapeeth, Gorakhnath, Police Station Gorakhnath and at present the Chief Minister, Government of Uttar Pradesh. On 28.11.2018, he addressed a public meeting with regards to general Vidhan Sabha Elections in Malakheda, Alwar (Rajasthan) in which he stated certain words for Lord Bajrangbali due to which the religious sentiments of public who are followers of Sri Bajrangbali have been hurt. The respondent knowing that his speech will cause hurt to the sentiments of a

specific group of people has stated about it in his general public meeting. He has also caused disrepute to his position as Chief Minister which is a constitutional post and has also not followed the circular issued by the Election Commission, Government of India. The said acts have been done by him for benefits in a wrongful manner to his party in elections and also to separate two group of persons so that they may start hating each other and may fight. The said fact has been read by the complainant and other persons in daily newspapers due to which the religious sentiments of other persons also got hurt. A legal notice dated 30.11.2018 was sent by the complainant but despite service of notice calling upon the respondent to tender apology to the public in writing and orally, he did not do it and by taking law in his hands the presiding deity of the complainant has been humiliated and to cause gain to his political party, humiliated Lord Bajrangbali in a public meeting. The faith of the complainant has been hurt. The complainant tried to lodge a report at the local police station and also gave a report to the Superintendent of Police, Mau on 1.1.2019 but no action has been taken and hence he has filed the present complaint. He prays that after taking the evidence, the accused be punished for offences under Section 295 (A), 298, 419, 420, 501 IPC.

4. In support of the complaint, the complainant was examined under Section 200 Cr.P.C. wherein he reiterated the version of the complaint. Under Section 202 Cr.P.C. Yugal Kishore Sharma, S/o Devnath Sharma was examined as P.W.1 and Anoop Kumar Yadav, S/o Rajendra Yadav was examined as P.W.2. The complainant also filed a copy of a newspaper named “Jansandesh Times” along with complaint, the copy of the same has been

annexed as Annexure No. - S.A-1 to the supplementary affidavit dated 7.9.2022.

5. The complaint as filed was numbered as Criminal Complaint Case No.128 of 2019, Naval Kishor Sharma Versus Ajay Singh Bist alias Yogi Adityanath.

6. Vide order dated 11.03.2022 passed by the Civil Judge (Senior Division)/Additional Chief Judicial Magistrate, M.P. M.L.A, Mau the said complaint was dismissed under Section 203 Cr.P.C. with the observation that the court has no territorial jurisdiction to entertain the same. Against the said order dated 11.03.2022 the complainant/petitioner filed a criminal revision before the Sessions Judge, Mau which was numbered as Criminal Revision No.54 of 2022, Naval Kishor Sharma Versus State of U.P. and another. The said revision was also dismissed vide judgement and order dated 26.04.2022 passed by the Sessions Judge, Mau. The present petition under Article 227 of the Constitution of India has thus been filed before this Court.

7. Learned counsel for the petitioner argued that:-

1) The hate speech was a deliberate intention in the general rally during election campaign. The opposite party no.2 was in his knowledge that it would cause turmoil and agitation throughout the country.

2) Due to the deliberate speech against Lord Bajrangbali, crores of his followers were pained.

3) The words used against Lord Bajrangbali were to impress people of reserved constituency.

4) The hate speech was read by the petitioner which hurt his religious sentiments and thus he pursued the remedy available under law.

5) This is not the first incident by the opposite party no.2 but is a repeated incident by a person holding a prestigious and constitutional post.

6) The complaint is maintainable in view of Section 179 Cr.P.C. which states that the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued and in the present matter the consequence has ensued being the petitioner reading the said newspaper which has hurt his religious feelings.

8. Learned counsel for the petitioner has relied upon the following judgements:-

(i.) Dr. Subramaniam Swamy Vs. Prabhakar S. Pai and another, 1983 (2) BomCR 129 (para 9).

(ii.) P. Lankesh & another Vs. H. Shivappa & another, 1994 0 CrLJ 3510 (para 10).

(iii.) Dilip Hazarika Vs. Nalin Ch Buragohain, 2002 CrLJ 1608 (para 6).

(iv.) Pankaj Jyoti Borah Vs. The State of Assam and others, 2018 0 CrLJ 1908 (para 9).

(v.) Ashok Singhal Vs. State of U.P. and another, 2005 2 Crimes (HC) 7 (para 10).

(vi.) Lee Kun Hee, President, Samsung Corporation, South Korea and others Vs. State of Uttar Pradesh and others, (2012) 3 SCC 132 (para 35).

9. It is argued that in all the said cases, the courts concerned have held that the place where the consequence has ensued is the place where a court gets territorial jurisdiction.

10. Learned Additional Advocate General for the State of U.P. vehemently opposed the present petition and the arguments of learned counsel for the petitioner. It is argued that:-

1. The opposite party no.2 in the present petition who has been arrayed as the accused in the complaint is a non-existent person. A person who has renounced the world and has entered into Sanyasi world and has become a Yogi cannot be called by any other name except for the name which he has adopted after becoming a Yogi. It is argued that the complaint states of a non-existent person as the accused and even the same person has been made as a respondent no.2 in the present petition.

2. The complaint is totally silent inasmuch as where and when the complainant read the newspaper. The complainant has not even stated that he was a subscriber to the said newspaper. It is also not stated either in the complaint or in his statement that the said newspaper was having any circulation in his area. It is argued that the newspaper is the foundation of creation of territorial jurisdiction in the present matter. The description about the same is totally missing.

3. The complainant has not made the Editor of the

newspaper as an accused. The bare reading of the said newspaper shows that it is some postal edition of the newspaper. There is no averment by the complainant that the said newspaper is circulated in his area. It is argued that Section 179 Cr.P.C. is not attracted at all in the present matter. The provision which applies is Section 177 Cr.P.C. The complainant does not anywhere stated about the credentials of the newspaper which would go to show that the same was a paper being circulated in his area. In the complaint he states of the news item to be read in daily newspaper but in his statement under Section 200 Cr.P.C., he states that the said news was heard, seen and read by him in print media and electronic media. The witnesses produced by him have also stated that they and other persons have read the news in daily newspaper but even the said witnesses have not stated about the date of the said newspaper, their names and the place where they have read it.

4. In so far as the alleged witnesses produced by the complainant are concerned, Yugal Kishore Sharma, P.W.1 who was examined under Section 202 Cr.P.C. is his real brother as is apparent from his parentage and also his address. The said fact has been concealed by the complainant and even by the said witness.

5. It is argued that the present petition is under Article 227 of the Constitution of India. The Court is a supervisory court under the said jurisdiction. There has been concurrent findings by two courts below being the trial court and the

revisional court. This Court cannot act as a Court of first appeal to reappreciate, reweight evidence or facts upon which determination under challenge is based. When a final finding is justified or can be supported, the supervisory jurisdiction cannot be used to correct it.

6. The document at page 22 of the supplementary affidavit which is being stated to be the list of cases lodged against the respondent no.2 is a new document filed before this Court. There is no reference of the same before the trial court and even before the revisional court and as such the same cannot be considered at this stage.

11. Learned counsel has relied upon the following judgements:-

(I) Aroon Purie Vs. Jayakumar Hiremath : (2017) 7 SCC 767 (para 3).

(II) Mahendra Singh Dhoni Vs. Yerraguntla Shyamsundar : (2017) 7 SCC 760 (para 14).

12. By placing the judgement in the case of Aroon Purie (Supra), it is argued that the inquiry in the matter was completed by the learned Magistrate who then came to the conclusion that the court has no territorial jurisdiction over it and then by a detailed order dismissed the same. Further by placing the judgement in the case of Mahendra Singh Dhoni (Supra), it is argued that the Apex Court has put a word of caution that the Magistrates who have been conferred with the power of taking cognizance and issuing summons are required to carefully scrutinize whether the allegations made in the complaint proceeding meet the basic ingredients of the offence, whether the concept of territorial jurisdiction is satisfied and whether the accused is really required

to be summoned and the said things are to be treated as the primary judicial responsibility of the Court issuing process. In the present case, the learned Magistrate has made an inquiry with regards to territorial jurisdiction of the matter and the jurisdiction of the said court and then has reached to its satisfaction that the court has no territorial jurisdiction to entertain the said complaint and as such dismissed the same under Section 203 Cr.P.C. It is argued that the present case is a case which deserves to be dismissed with exemplary cost as the petitioner is abusing the process of law and courts for vested interest knowing the actual position of law as he is an Advocate.

13. After having heard learned counsels for the parties and perusing the records, the facts which emerge out are that the petitioner herein had filed a complaint dated 11.1.2019 against the opposite party no.2 for offences under Section 295 (A), 298, 419, 420, 501 IPC for an incident which is said to have taken place on 28.11.2018 in Malakheda, District Alwar (Rajasthan). The complaint has been filed before the Chief Judicial Magistrate, Mau, District Mau by the petitioner who is a resident of Mau for attracting territorial jurisdiction there. The complainant states that he and other persons have read in daily newspaper a news item relating to a hate speech given by the accused in Malakheda, District Alwar (Rajasthan) on 28.11.2018 by which words being derogatory in nature against Lord Bajrangbali were used which has hurt his religious sentiments. It is relevant to state here that it is stated that the said speech was addressed in a public meeting of general Vidhan Sabha Elections at the said place. The complainant in the inquiry under Section 200 Cr.P.C. then states that the accused with an intention to hurt the religious sentiments

of a group of persons had given the speech which was heard, seen and read by him in print media and electronic media. Yugal Kishore Sharma, P.W.1 and Anoop Kumar Yadav, P.W.2 in their statements under Section 202 Cr.P.C. have stated that the complainant, they and other people have read in daily newspaper about the said speech due to which their religious sentiments have been hurt. The details of the newspaper and its credentials are conspicuously missing in the complaint, statement recorded under Section 200 Cr.P.C. of the complainant and the statements of the alleged witnesses under Section 202 Cr.P.C. The complainant does not anywhere state about the date and time when he read the said news item. His witnesses are also silent about the same. A copy of Jansandesh Times newspaper has been filed before the trial court which has also been filed before this Court as Annexure S.A-1 to the supplementary affidavit. The relevant paragraphs in which it has been addressed in the said supplementary affidavit is para no.4 in which the same has been described as newspaper dated 29.11.2018 and for the first time, it is stated in the said paragraph that the said newspaper is having its circulation and selling in district Jaunpur, Azamgarh, Mau and Gorakhpur and is published from Varanasi. The said averments are missing in the complaint, statement of the complainant and in the statement of his witnesses.

14. The backbone of the present complaint is the news published in a local newspaper. The basis for making allegations is an article relied by the petitioner said to have been published in a newspaper named as “Jansandesh Times”. Admittedly the complainant and his witnesses were not present in the said meeting where the words as said to have been hurt their religious

sentiments, faith and have caused disrepute to Lord Bajrangbali were said. The complainant in his statement under Section 200 Cr.P.C. states that he heard, saw and read the same in print media and electronic media but his witnesses in the inquiry under Section 202 Cr.P.C. stated of reading the same in daily newspapers but there is nothing on record to corroborate the same and it is too vague to be believed. Only a newspaper cutting has been placed by the complainant on record as evidence although he states to have seen and heard it in electronic media also.

15. The reporting in newspaper has to be fortified whether it is correct or not. It is a hearsay secondary evidence in itself and unless the person reporting it is examined, is not admissible. Any other person before whom the incident has occurred can also be examined to prove the said fact and make it admissible.

16. The admissibility of news paper reports in evidence has been considered and decided many times. In the case of ***Samant N. Balkrishna v. George Fernandez :*** **(1969) 3 SCC 238**, the Apex Court in paragraph 47 has held as under:-

> ***"47.*** *The meeting at Shivaji Park about which we shall say something presently, was not held in Mr Fernandez's constituency. The similarity of ideas or even of words cannot be pressed into service to show consent. There was a stated policy of Sampurna Maharashtra Samiti which wanted to join in Maharashtra all the areas which had not so far been joined and statements in that behalf must have been made not only by Mr Atrey but by several other persons. Since Mr Atrey was not appointed as agent we cannot go by the similarity of language alone. It is also very*

significant that not a single speech of Mr Fernandez was relied upon and only one speech of Mr Fernandez namely, that at Shivaji Park was brought into arguments before us by an amendment which we disallowed. The best proof would have been his own speech or some propaganda material such as leaflets or pamphlets etc. but none was produced. The "Maratha" was an independent newspaper not under the control of the Sampurna Maharashtra Samiti or the S.S.P. which was sponsoring Mr Fernandez or Mr Fernandez himself. Further we have ruled out news items which it is the function of the newspaper to publish. A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well-known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible. In the present case the only attempt to prove a speech of Mr Fernandez was made in connection with the Shivaji Park meeting. Similarly the editorials state the policy of the newspaper and its comment upon the events. Many of the news items were published in other papers also. For example Free Press Journal, the Blitz and writers like Welles Hengens had also published similar statements. If they could not be regarded as agents of Mr Fernandez we do not see any reason to hold that the "Maratha" or Mr Atrey can safely be regarded as agent of Mr Fernandez when

acting for the newspaper so as to prove his consent to the publication of the defamatory matter. We are therefore of opinion that consent cannot reasonably be inferred to the publications in the "Maratha". We are supported in our approach to the problem by a large body of case law to which our attention was drawn by Mr Chari. We may refer to a few cases here : Bishwanath Upadhaya v. Hardal Das [1958 Ass 97] ; Abdul Majeed v. Bhargavan (Krishnan) [AIR 1963 Ker 18] ; Rustom Satin v. Dr Sampoornanand [20 ELR 221] ; Sarla Devi Pathak v. Birendra Singh [20 ELR 275] ; Krishna Kumar v. Krishna Gopal [AIR 1964 Raj 21] ; Lalsing Kesbrising Sehvar v. Vallabhdas Shankarlal Phekdi [AIR 1967 Guj 62] ; Badri Narain Singh v. Kamdeo Prasad Singh [AIR 1951 Pat 41] and Sarat Chandra Rabba v. Khagendranath Math [AIR 1961 SC 334] . It is not necessary to refer to these cases in detail except to point out that the Rajasthan case dissents from the case from Assam on which Mr Jethamalani relied. The principle of law is settled that consent may be inferred from circumstantial evidence but the circumstances must point unerringly to the conclusion and must not admit of any other explanation. Although the trial of an election petition is made in accordance with the Code of Civil Procedure, it has been laid down that a corrupt practice must be proved in the same way as a criminal charge is proved. In other words, the election petitioner must exclude every hypothesis except that of guilt on the part of the returned candidate or his election agent. Since we have held that Mr Atrey's activities must be viewed in two compartments, one connected with

Mr Fernandez and the other connected with the newspaper we have to find out whether there is an irresistable inference of guilt on the part of Mr Fernandez. Some of the English cases cited by Mr Jethamalani are not a safeguide because in England a distinction is made between "illegal practices" and "corrupt practices". Cases dealing with "illegal practices" in which the candidate is held responsible for the acts of his agent are not a proper guide. It is to be noticed that making of a false statement is regarded as "corrupt practice" and not an "illegal practice" and the tests are different for a corrupt practice. In India all corrupt practices stand on the same footing. The only difference made is that when consent is proved on the part of the candidate or his election agent to the commission of corrupt practice, that itself is sufficient. When a corrupt practice is committed by an agent and there is no such consent then the petitioner must go further and prove that the result of the election insofar as the returned candidate is concerned was materially affected. In Bayley v. Edmunds, Byron and Marshall [(1894) 11 TLR 537] strongly relied upon by Mr Daphtary, the publication in the newspaper was not held to be a corrupt practice but the paragraph taken from a newspaper and printed as a leaflet was held to be a corrupt practice. That is not the case here. Mr Patil's own attitude during the election and after is significant. During the election he did not once protest that Mr Fernandez charged his workers with hooliganism. Even after the election Mr Patil did not attribute anything to Mr Fernandez. He even said that the Bombay election was conducted with propriety. Even at the filing of the election

petition he did not think of Mr Fernandez but concentrated on the “Maratha”."

17. In the case of ***Laxmi Raj Shetty v. State of T.N. :*** **(1988) 3 SCC 319** the Apex Court in paragraphs 25 and 26 has held as under:-

"25. *As to the first, the accused Laxmi Raj Shetty was entitled to tender the newspaper report from the Indian Express of the 29th and the regional newspapers of the 30th along with his statement under Section 313 of the Code of Criminal Procedure, 1973. Both the accused at the stage of their defence in denial of the charge had summoned the editors of Tamil dailies Malai Murasu and Makkal Kural and the news reporters of the Indian Express and Dina Thanthi to prove the contents of the facts stated in the news item but they dispensed with their examination on the date fixed for the defence evidence. We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein.*

26. *It is now well settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in absence of the maker of the statement appearing in court and deposing to have*

perceived the fact reported. The accused should have therefore produced the persons in whose presence the seizure of the stolen money from Appellant 2's house at Mangalore was effected or examined the press correspondents in proof of the truth of the contents of the news item. The question as to the admissibility of newspaper reports has been dealt with by this Court in Samant N. Balkrishna v.George Fernandez [(1969) 3 SCC 238 : (1969) 3 SCR 603 : AIR 1969 SC 1201] . There the question arose whether Shri George Fernandez, the successful candidate returned to Parliament from the Bombay South Parliamentary Constituency had delivered a speech at Shivaji Park attributed to him as reported in the Maratha, a widely circulated Marathi newspaper in Bombay, and it was said: (SCC p. 261, para 47)

"A newspaper item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

We need not burden the judgment with many citations. There is nothing on record to substantiate the facts as reported in the newspapers showing recovery of the stolen amount from the residence of Appellant 2 at Mangalore. We have therefore no reason to discard the testimony of PW 50

and the seizure witnesses which go to establish that the amount in question was actually recovered at Madras on the 29th and the 30th as alleged."

18. In the case of ***Quamarul Islam v. S.K. Kanta :*** **1994 Supp (3) SCC 5** in paragraph 48 it has been held by the Apex Court as under:-

"48. *Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and Publisher, PW 4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act. The learned trial Judge could not treat the newspaper reports as duly 'proved' only by the production of the copies of the newspaper. The election petitioner also examined Abrar Razi, PW 5, who was the polling agent of the election petitioner and a resident of the locality in support of the correctness of the elereports including advertisements and messages as published in the said newspaper. We have carefully perused his testimony and find that his evidence also falls short of proving the contents of the reports of the alleged speeches or the messages and the advertisements, which appeared in different issues of the newspaper. Since, the maker of the report which formed*

basis of the publications, did not appear in the court to depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the same in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent. The evidence of the election petitioner himself or of PW 4 and PW 5 to prove the contents of the messages and advertisements in the newspaper in our opinion was wrongly admitted and relied upon as evidence of the contents of the statement contained therein."

19. In the case of ***Ghanshyam Upadhyay v. State of U.P. : (2020) 16 SCC 811*** it has been held by the Apex Court in paragraphs 6, 7 and 8 as under:-

*"**6.** As noted, the entire basis for making the allegations as contained in the miscellaneous petition is an article relied on by the petitioner said to have been published in the newspaper. There is no other material on*

record to confirm the truth or otherwise of the statement made in the newspaper. In our view this Court will have to be very circumspect while accepting such contentions based only on certain newspaper reports. This Court in a series of decisions has repeatedly held that the newspaper item without any further proof is of no evidentiary value. The said principle laid down has thereafter been taken note in several public interest litigations to reject the allegations contained in the petition supported by newspaper report.

7. It would be appropriate to notice the decision in *Kushum Lata* v. *Union of India* [*Kushum Lata* v. *Union of India*, (2006) 6 SCC 180] wherein it is observed thus : (SCC p. 186, para 17)

"17. … It is also noticed that the petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases, newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should not normally be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statements made and information given in the petition."

8. This Court in *Rohit Pandey* v. *Union of India* [*Rohit Pandey* v. *Union of India*, (2005) 13 SCC 702] while considering the petition purporting to be in public interest filed by a member of the legal fraternity had come down heavily on the petitioner, since the said petition was based only on two newspaper reports without further verification."

20. From the above judgements it is clear that newspaper report

by itself does not constitute an evidence of the contents of it. The reports are only hearsay evidence. They have to be proved either by production of the reporter who heard the said statements and sent them for reporting or by production of report sent by such reporter and production of the Editor of the newspaper or it's publisher to prove the said report. It has been held by the Apex Court that newspaper reports are at best secondary evidence and not admissible in evidence without proper proof of its content under the Indian Evidence Act, 1872. It is thus clear that newspaper report is not a “legal evidence” which can be examined in support of the complainant.

21. It is trite law that there has to be legal evidence in support of the allegations levelled against a person. In the present case the only evidence relied upon is the newspaper reporting and nothing else. For what has been stated above and as per the settled legal position, a newspaper report is not a “legal evidence”.

22. In so far as the judgements relied by learned counsel for the petitioner are concerned, in the case of **Dr. Subramaniam Swamy** (Supra) the same related to a press conference which was held by the accused at Chandigarh in which he had made certain statements which were said to be defamatory. The same was made in the presence of several newspaper reporters and others and then on the next day it was published in the newspaper. In the case of **P. Lankesh** (Supra), the accused were the printer, editor and publisher of a news magazine “Lankesh Patrika” in which an article containing alleged defamatory imputations against the complainant was published. In the case of **Dilip Hazarika** (Supra), the two accused were the Managing

Director and the Editor of a weekly “Raijer Prahri” which had published a news item against which a complaint was filed. In the case of **Pankaj Jyoti Borah** (Supra), the accused persons had held a press meeting at a press club which was covered by the electronic media and print media and was published in newspaper. In the case of **Ashok Singhal** (Supra), an article had appeared in a weekly news magazine “Panchjanya” which had carried an interview of the accused in which it was alleged that there were certain offending things said by him. The case of **Lee Kun Hee** (Supra), is totally different on facts and distinguishable from the present case. The said case arises out of an agreement between two parties with regards to supply of certain products and the dispute related to business transaction. It has no application as such in the present case.

23. Conveying a press conference and/or giving an interview to the press is a totally different act than addressing a general public meeting in elections. A person holding a press conference and a person giving an interview to the press has a clear intention and message to the persons present that his speech or lecture or answers be published in newspaper and magazines. Addressing a general public meeting during elections for the purposes of canvasing in elections is a totally different act with a different intention and object. The same is to address the gathering present at the spot so as to imbibe a thought in them for supporting the said political party.

24. Section 177 of Criminal Procedure Code, 1973 reads as under:-

> *“**177. Ordinary place of inquiry and trial. -** Every offence*

shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.”

25. Section 179 of Criminal Procedure Code, 1973 reads as under:-

*“**179. Offence triable where act is done or consequence ensues. -** When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.*”

26. While dealing with the word “consequence” appearing in Section 179 of Cr.P.C., in the case of **Ganeshi Lal Vs. Nand Kishore : 1912 SCC Online All 76 : 1912 (Vol. X) A.L.J.R. 45**, it has been held as under:-

“The word "consequence" in this section, in my opinion, means a consequence which forms a part and parcel of the offence. It does not mean a consequence which is not such a direct result of the act of the offender as to form no part of that offence. In Babu Lal Vs. Ghansham Dass : (1908) 5 A.L.J.R. 333, it is remarked: "it is contended that section 179 by reason of the words ‘contained in it’ and ‘of any consequence which has ensued’ gives the Magistrate at Aligarh in this case jurisdiction. But the only reasonable interpretation which can be put upon these words is that they are intended to embrace only such consequences as modify or complete the acts alleged to be an offence." The above remarks support the view I take.”

27. The Apex Court in the case of **Mahendra Singh Dhoni** (Supra) has specifically in para 14 sounded word of caution to the Magistrates conferred with the power of taking cognizance and issuing summons to satisfy themselves with regard to concept of territorial jurisdiction apart from the other aspects of the matter. In the present case, the trial court has rightly followed the procedure and passed the impugned order dated 11.03.2022. The trial court was even cognizant of the fact that summoning of a person in a criminal case is a serious matter. Times and again the Apex Court and this Court has been reminding the legal position that summoning of a person is a serious issue and a person cannot be summoned merely by making an allegation against him. The order of the trial court is thus found to be a proper and judicious exercise of its power. The revisional court while deciding the revision against the order dated 11.03.2022 passed by the trial court has also considered every aspect of the matter and then has come to its conclusion that the order impugned therein does not suffer from any illegality and has dismissed the revision. The place of occurrence in the present case is Malakheda, District Alwar (Rajasthan). The complaint, inquiry on it in the nature of statements under section 200 and 202 Cr.P.C. are vague in so far as accruing of the cause of action to the complainant at the place of filing of the complaint is concerned. This Court does not find any irregularity, illegality or perversity in the judgement and order dated 26.04.2022 passed by the revisional court also.

28. Thus looking to the facts and circumstances of the case, the legal pronouncements as enumerated above, this Court comes to the conclusion that the Court at Mau had no territorial jurisdiction to entertain the said complaint. The dismissal of the same vide

order dated 11.03.2022 under Section 203 Cr.P.C. is just and proper. Further the dismissal of the revision vide judgment and order dated 26.04.2022 (wherein the order dated 11.03.2022 was challenged) is also without any illegality, irregularity and perversity.

29. The present petition is thus dismissed.

30. At this stage it would be apt to state that there has been a concurrent finding by two courts with regards to the question of territorial jurisdiction. The same is also been affirmed by this court.

31. The complainant/petitioner is an Advocate by profession as has been declared by him in the affidavit given in the present petition before this Court. Even in the alleged legal notice dated 07.01.2019 sent by him, the copy of which is annexed as Annexure No. S.A-3 to the supplementary affidavit dated 07.09.2022 in the bottom at the place of his signature he has disclosed himself to be an Advocate. He has clearly abused the process of law. In these circumstances, this Court imposes a token cost of Rs. 5,000/- on him to be paid within 30 days from today in the Mediation and Conciliation Centre of this Court for utilization therein.

(Samit Gopal, J.)

Order Date :-30.09.2022

Gaurav

Digitally signed by GAURAV KULSHRESTHA
Date: 2022.09.30 16:21:49 IST
Reason:
Location: High Court of Judicature at Allahabad